

REMARKS

In a Restriction Requirement mailed December 4, 2008, election of one of the following five groups was required.

Group I, claims 1-12, drawn to a method for producing a can body involving welding of a sealed seam; or

Group II, claims 13-14, drawn to a method for producing a can body involving producing of a can wall; or

Group III, claims 15-20, drawn to a can body with a can jacket: or

Group IV, claim 21, drawn to a device for producing a can body; or

Group V, claim 22, drawn to a device for producing jacket section sections.

Applicants elect Group I, claims 1-12 with traverse.

Lack of Unity of Invention Has Not Been Demonstrated

Applicant respectfully asserts that the Restriction Requirement is improper as it does not comply with the rules of practice for PCT national stage applications, because the appropriate unity of invention standard has not been applied.

The present application is a National Stage Application submitted under 35 U.S.C. §371 and therefore unity of invention rules apply. In PCT National Stage Applications, the Examiner may issue a restriction type requirement if no unity of invention exists. However, the Examiner must state why there is no “single general inventive concept” (see MPEP §1893.03(d)). Thus, a single application may include one

invention or more than one invention if the inventions are “linked as to form a single and general inventive concept.”

Applicant submits that the subject matter of claims 1-22 are so linked as to form as to form a single general inventive concept as defined under PCT Rule 13.2, which recites that the requirements of unity of invention shall be fulfilled only when there is a technical relationship among those inventions involving one or more of the same or corresponding special technical features. The expression “special technical features” means those features that define a contribution which each of the claimed inventions, considered as a whole, makes over the prior art.

Applicant submits that the claims of each of the defined Groups of claims involve a special technical feature that defines a contribution over the prior art. For example, each of Groups I, III and IV include many of the same or corresponding special technical features, such as a can body with a can jacket that is comprised of or produced from a flat material having a laser welded seam, at least one closure member that is arranged a ring shaped closed laser welded seam and the closing seam contact surfaces of the can jacket and the closure member. Accordingly, at least each of Groups I, III and IV involve one or more of the same or corresponding special technical features.

Furthermore, MPEP §1.475 (unity of invention) recites that an International or National Stage application containing claims to different categories of invention will be considered to have unity of invention if the claims are drawn to ...a product and a process specially adapted for the manufacture of the product (37 C.F.R. §1.475(b)(5)).

In contrast to the proper application of the rules of practice for the national stage of PCT applications, it is alleged that the “inventions listed as Groups I-V do not relate to a single and general inventive concept under PCT Rule 13.1 because, under PCT Rule 13.2 they lack the same or corresponding special technical features” because “Group II-V do not require the specific method as claimed in Group I. Group I and III-V do not require the specific method as claimed in group 2. The product of Group III does not require to perform the specific technical features as required in the method groups, such as Group II. The apparatus of Group IV does not require to perform the specific technical features as required in the method groups, such as Group II. The apparatus of Group V does not require to perform the specific technical features as required in the method groups, such as Group I.”

Thus, because the Office Action has not properly demonstrated an absence of unity of invention under the rules, and because unity of invention in fact exists at least between Groups I, III and IV, the Restriction Requirement is improper and must be withdrawn. Reconsideration and withdrawal of the Restriction Requirement is respectfully solicited.

For all of the above stated reasons, reconsideration and withdrawal of the outstanding restriction/election requirement and favorable allowance of all claims in the instant application are earnestly solicited.

If necessary, the Commissioner is hereby authorized in this, concurrent, and future replies to charge payment or credit any overpayment to Deposit Account No. 08-0750 for any additional fees required under 37 C.F.R. §§ 1.16 or 1.17; particularly, extension of time fees.

Respectfully submitted,

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